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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/549,002 | 04/14/2000 | Paul C. Hassler | 7330*1 | 7996 |

23416 7590 03/29/2004

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| EXAMINER |
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MAYO, TARA L

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| ART UNIT | PAPER NUMBER |
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3671

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/549,002

Applicant(s)

HASSLER, PAUL C.

Examiner

Tara L. Mayo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 3 through 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner (U.S. Patent No. 5,308,188) in view of Grosh (U.S. Patent No. 3,974,599), Wiedrich (U.S. Patent No. 5,956,905), and Boeger (U.S. Patent No. 5,630,675)

Shaftner '188 discloses a system for protecting a roadway structure from damage having a resilient, replaceable collar having a body with upper and lower surfaces (10, Figure 1). An opening is provided through the center and sized to accommodate the outer periphery of the roadway structure (12, Figure 1). The sidewalls of the collar are sloped and extend downward from the upper surface of the body to the lower surface of the body (11, Figure 1). The upper surface of the body is in substantially planar alignment with the upper surface of the roadway structure (Figures 2 and 3).

At least one resilient riser is provided between the lower surface of the collar body and an upper surface of the roadway pavement. The resilient riser has a thickness such that the collar body and resilient riser together have a height substantially equal to the distance the

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roadway structure extends above the roadway pavement (col. 3, lines 42-44 and 50-53). The lower surface of the collar body is planar (Figure 2).

Regarding claims 2 and 10, the riser/collar is made from an elastomeric material (col. 2, lines 1-3 and col. 3, lines 54-57).

Regarding claim 3, the specific roadway structures it surrounds are utility access holes, such as manhole covers, gas and water utility covers, storm sewer inlets, etc. (col. 1, lines 9-11).

Regarding claims 4 and 5, the roadway pavement is tripped such that the collar is used for placement around an access hole that is temporarily elevated (col. 1, lines 9-18).

Regarding claim 6, the collar is circular with a central circular opening to snugly engage the access hole.

Regarding claim 7, the collar can also be designed to be rectangular in shape with a circular central opening (Figure 4). The collar body has a height equal to the distance the roadway structure extends above the roadway pavement (Figures 2 and 3). The collars can be stacked one on top of the other to provide for a riser effect such that together they have a height equal to the distance the roadway structure extends above the roadway pavement (col. 1, lines 50-52; col. 3, lines 39-44).

Shaftner '188 discloses the claimed device except for the upper surface of the collar body being substantially planar. Grosh '599 discloses that it is known in the art to provide an upper surface of a ramp member leading to a roadway structure to be substantially planar. It

would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the ramp of Shaftner '188 with the planar upper surface of Grosh '599, in order to allow for a flush fit, and therefore, a smooth transition along the top of a grating or cover.

Regarding the limitation of the upper surface of the riser being planar, Shaftner '188 discloses the claimed device except for the use of risers having planar upper surfaces (14, Figure 1) in order to provide a stable/easily stackable base with which to raise the height of the collar body to a desired level. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the riser of Shaftner '188 with the planar upper surface of Wiedrich '905 to provide a stable/easily stackable base with which to raise the collar body to a desired level and to make height adjustments.

Shaftner '188 discloses the claimed invention except for the collar and the riser being made of cured, recycled rubber scrap tires. Boeger '675 expressly teaches the use of cured, recycled rubber scrap tires for the manufacture of a resilient road base (col. 6, lines 21 through 24). It would have been obvious for one having ordinary skill in the art at the time the invention was made to make the collar and riser of scrap tires as taught by Boeger '675 to efficiently provide a resilient product.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

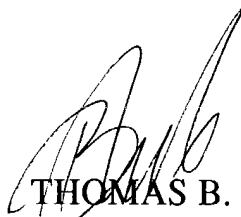
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TLM
22 March 2004



THOMAS B. WILL
SUPERVISORY PATENT EXAMINER
GROUP 3600